



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 ROBERT AND NANCY D. HANLEY)

For Appellants: M. Joseph Abel
Certified Public Accountant.

For Respondent: Kathleen M. Morris
Counsel

O P I N I O N

This appeal is made pursuant to section 19057 subdivision (a) of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Robert and Nancy D. Hanley for refund of personal income tax *in* the amount of \$8,443.00 for the year 1976.

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The issue presented is whether appellants, Robert and Nancy D. Hanley, were California residents during taxable year 1976.

Appellant-husband (hereinafter appellant) is a businessman involved in several business ventures for which his wife is said to provide part-time clerical services.

In 1973, appellant acquired a 50 percent interest in Whirl-Spa, Inc., a Florida corporation. In June of 1975, appellant's associate in Whirl-Spa died and appellant bought out his associate's interest and became the sole owner of Whirl-Spa.

On September 27, 1974, appellants purchased a two-bedroom townhouse, located in San Francisco, California for \$81,000.00. Prior to the purchase of the townhouse, appellants resided in a house which they owned in Santa Clara, California. They later used this house as rental property. Appellants also owned a condominium in Aptos, California, which they sold in November of 1975 for \$53,500.00. During this same month, appellants purchased a one-bedroom condominium in Fort Lauderdale, Florida, for \$48,000.00. Since 1974 appellants have continuously claimed the homeowner's property tax exemption (allowable only on the principal residence of the claimant) on the townhouse in San Francisco. Also, since 1974, appellant has operated a health products business located in San Francisco, California, doing business as "Bob Hanley and Associates." Additionally, appellant is the sole shareholder of a business incorporated in California on January 26, 1977, under the name Catalog Design and Production, Inc. This corporation's business office is also located in San Francisco, California.

On their 1976 California joint resident personal income tax return appellants reported adjusted gross income of \$92,051.00. Their reported income consisted primarily of interest income in the amount of \$20,000.00 from Illinois Mineral Company and capital gain from an installment sale in 1976 of 180 shares of Illinois Mineral Company stock for the sales price of 1.2 million dollars.

On April 20, 1978, appellants filed an amended return claiming to be residents of Florida for all of 1976. They based their claim of Florida residency on the fact that in 1976, appellant had spent over eight

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months in Florida managing Whirl-Spa Inc., and had not, according to appellants, **received** any California earned income. Appellants also **claimed** the Florida condominium as their principal place of residence. Accordingly, appellants claimed a refund of all taxes paid to California for the taxable year 1976. After examining all the available facts, respondent denied their claim on the basis that appellants were California residents for the entire year of 1976. Appellants then filed this timely appeal.

Revenue and Taxation Code section 17014(a) defines the term "resident" to include:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

Further, section 17014(c) provides that:

Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

Respondent relies on subdivision (2) of this section. Respondent contends that appellants were California residents throughout 1976 because they were domiciled here, and because appellant's absence during this year was for a temporary or transitory purpose. For the reasons expressed **below**, we agree with respondent.

"Domicile" has been defined as "the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the **place where** he intends to remain and to which, whenever he is absent, he has the intention of returning" (Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 284 [41 Cal.Rptr. 673] (1964).) A person may have only one domicile at a time (Whittell, supra), and he retains that domicile until he acquires another elsewhere. (In re Marriage of Leff, 25 Cal.App.3d 630, 642 [102 Cal.Rptr. 195] (1972).) The establishment of a new domicile requires actual-residence in a new place and the intention to remain there permanently or indefinitely. (Estate of Phillips,

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269 Cal.App.2d 656, 659 [75 Cal.Rptr. 301] (1969).) One's acts must give clear **proof** of a concurrent intention to abandon the old domicile and establish a new one. (Chapman v. Superior Court, 162 Cal.App.2d 421, 426-427 [328 P.2d 23] (1958).)

Appellants concede that they were both residents and domiciliaries of California prior to the appeal year. They maintain, however, that their status changed in November of 1975 when appellant purchased a home in Fort Lauderdale, Florida with the "full intent of living there the majority of the time to actively run his business located [there]." We are convinced, in spite of this assertion by appellants, that they remained California domiciliaries throughout 1976. Even after the purchase of the condominium in Florida, appellant continued to divide his time between Fort Lauderdale and California with his wife remaining in San Francisco. Appellant maintained a larger, more expensive home in California, to which he always returned. Furthermore, appellant claimed this home as his permanent residence for purposes of the homeowner's property tax exemption. In addition, appellant also retained business connections in this state. These factors appear to indicate an intention on appellant's part to retain his California domicile and his actions in Florida do not present clear proof of an intention to establish a new domicile there.

Since appellant was domiciled in this state, he will be considered a California resident if his absence was for a temporary or transitory purpose. In the Appeal of David J. and Amanda Broadhurst, decided by this board April 5, 1976, we summarized the case law and regulations interpreting the term "temporary or transitory purpose." The summary is as follows:

Respondent's regulations indicate that whether a taxpayer's purposes in entering or leaving California are temporary or transitory in character is essentially a question of fact, to be determined by examining all the circumstances of each particular case [Citations.] The regulations also provide that the underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence [Citation.] The purpose of this definition is to define the class of individuals who should contribute to the support of

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- the state because they receive substantial benefits and protection ~~from~~ its laws and government. [Citation.] onsistently with these regulations, we have held that the connections which a taxpayer maintains in this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. [Citation,] Some of the contacts we have considered relevant are the maintenance of a family **home, bank accounts,** or business interests; voting registration and the possession of a local driver's license; and ownership of real property., [Citations.] Such connections are important both as a measure of the benefits and protection which the taxpayer has received from the laws and government of California, and also as an objective indication of whether the taxpayer **entered or** left this state for temporary or transitory purposes. [Citation.]

Although appellant was physically present in California for only 137 days during the appeal year, he enjoyed substantial benefits and protection from the laws and government of the state; a factor indicative of residence. (Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971.) Appellant owned real estate in California and had significant business interests here; he hired California accountants to handle those interests, and continued to establish new California business interests, Appellant and his wife were each licensed to drive a motor vehicle in this state and both of their cars were registered in California with one car financed by a California bank. Appellant and his wife voted in California during 1976. In addition, appellant's wife remained in California during appellant's **absences**, and as was the case in Appeal of Larry J. and Donna M. Johnson, decided by this board May 4, 1976, the instant appellant could be secure in the knowledge that the marital community was protected by California's laws and government while he was absent from the state. Such close connections with this state warrant a conclusion that appellant's absences were temporary or transitory in nature, and that he was therefore a California resident during the year 1976. (Appeal of Bernard and Helen Fernandez, supra; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal., July 6, 1971.)

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For the reasons stated above, we sustain respondent's action.

ORDER

Pursuant to the views ~~expressed~~ in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Robert and Nancy D. Hanley for refund of personal income tax in the amount of \$8,443.00 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this **29th day**
of July, 1981, by the State Board of Equalization,
 with Board **Members** Mr. Dronenburg, Mr. Reilly, **Mr.** Bennett
 and Mr. Nevins present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly, Member

William M. Bennett, Member

Richard Nevins, Member

_____, Member